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August 4, 2023

Via ECF

Hon. Jesse M. Furman
U.S. District Court Judge
Southern District of New York
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: United States v. Khalid Alboushari
19 cr 17 (S1)

Dear Judge Furman:

I represent Khalid Alboushari on the above captioned matter. We are scheduled to appear for sentencing before Your Honor on August 8, 2023 at 10 AM.

In the sentencing submission dated August 1, 2023, the Government sought an above Guidelines sentence for Mr. Alboushari citing 11 aggravating factors that the Guidelines range fails to take into account (ECF No. 38 at 4). The plea agreement entered by the parties does not contemplate a *Fatico* hearing or identify any of the factors cited by the Government as relevant conduct pursuant to USSG § 1B1.3.

Both parties are ready to proceed sentencing as scheduled. However, in light of the Defense objections to the Pre-Sentence Investigation Report and the Government's August 1, 2023 sentencing submission, there appears to be numerous factual disputes between the parties relating to the aggravating factors identified by the Government in their submission.

The Defense respectfully submits that the Government should be precluded from arguing these aggravating factors at Mr. Alboushari's sentencing as there was no provision in Mr. Alboushari's plea agreement regarding same (except for reference to potential 3553(a) arguments) and the Defense had no notice about the Government seeking to litigate these issues until the filing of the Government's sentencing submission.

If your Honor would consider any of the potential aggravating factors in determining Mr. Alboushari's sentence, the Defense respectfully seeks a hearing pursuant to *United States v. Fatico*, 603 F.2d 1053 (2d Cir. 1979) to litigate these issues. Both Defense and the Government respectfully seek guidance from the Court which issues, if any, require a *Fatico* hearing. If a *Fatico* hearing is necessary, the parties respectfully seek a 30-day adjournment of sentencing to schedule witnesses and prepare for the hearing.

The parties are available for a *Fatico* hearing and sentencing on September 11, September 12, September 18 – September 21 or September 25 – September 29, 2023 if it pleases the Court.

Thank you for your time and consideration of this request.

Respectfully Submitted,

s/ Elena Fast

Elena Fast, Esq.

Counsel for Khalid Alboushari

Defendant is obviously free to make *legal* arguments at sentencing to the effect that the Court should not consider certain facts or arguments made by the Government. That is, a *Fatico* hearing is necessary only if there are disputed *facts* that might affect the Defendant's sentence. No later than **August 7, 2023**, Defendant shall file a letter listing any and all facts set forth in the Presentence Investigative Report or the Government's sentencing submission that he disputes and providing *his* view with respect to whether a *Fatico* hearing is appropriate or necessary. The Government shall file a letter no later than **August 8, 2023**, indicating its view with respect to whether a *Fatico* hearing is appropriate or necessary. Upon review of the parties' letters, the Court will decide whether a *Fatico* hearing is necessary.

In light of the foregoing, sentencing is ADJOURNED to **August 24, 2023**, at **10 a.m.** If the Court concludes that a *Fatico* hearing is necessary, sentencing will be adjourned to September.

The Clerk of Court is directed to terminate ECF No. 39.

SO ORDERED.

August 4, 2023

cc: All attorneys of record via ECF